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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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DATE: JULY 9, 2001  
DOCKET NO: T-03999A-01-0207  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes. The recommendation has been filed in the form of an Opinion and Order on:

EL PASO GLOBAL NETWORKS COMPANY  
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 18, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 24, 2001 AND JULY 25, 2001

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF EL  
7 PASO GLOBAL NETWORKS COMPANY FOR A  
8 CERTIFICATE OF CONVENIENCE AND  
9 NECESSITY TO PROVIDE COMPETITIVE  
FACILITIES-BASED AND RESOLD LOCAL  
EXCHANGE, INTEREXCHANGE, AND ACCESS  
TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03999A-01-0207

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: June 20, 2001

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

13 APPEARANCES: Tony S. Lee, SWIDLER BERLIN SHEREFF  
14 FRIEDMAN, LLP, on behalf of El Paso Global  
Networks Company;

15 Teena Wolfe, Staff Attorney, Legal Division, on behalf  
16 of the Utilities Division of the Arizona Corporation  
Commission.

17 **BY THE COMMISSION:**

18 Having considered the entire record herein and being fully advised in the premises, the  
19 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On March 7, 2001, El Paso Global Networks Company ("EPGN" or "Applicant") filed  
22 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to  
23 provide competitive facilities-based and resold local exchange, interexchange, and access  
24 telecommunications services in Arizona.

25 2. EPGN is a Delaware corporation, authorized to do business in Arizona. EPGN's  
26 parent company is El Paso Energy Corporation.

27 3. On April 26, 2001, EPGN filed Affidavits of Publication indicating compliance with  
28 the Commission's notice requirements.

1           4.     On June 5, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff  
2 Report, which recommended approval of the application and included a number of additional  
3 recommendations.

4           5.     On June 14, 2001, a Procedural Order was issued setting the matter for hearing on  
5 June 20, 2001.

6           6.     A hearing was held on June 20, 2001, at which Applicant and Staff presented  
7 evidence. At the hearing, Staff made several minor changes to the Staff Report recommendations.

8           7.     Qwest and EPGN are in the process of negotiating an interconnection agreement.

9           8.     The management of EPGN has many years of experience in the telecommunications  
10 industry.

11          9.     Applicant has the technical capability to provide the services that are proposed in its  
12 application.

13          10.    Currently there are several incumbent providers of local exchange, toll, and exchange  
14 access services in the service territory requested by Applicant, and numerous other entities have been  
15 authorized to provide competitive local exchange services in all or portions of that territory.

16          11.    It is appropriate to classify all of Applicant's authorized services as competitive.

17          12.    The Staff Report stated that Applicant has no market power and the reasonableness of  
18 its rates would be evaluated in a market with numerous competitors.

19          13.    According to Staff, EPGN submitted its unaudited financial statements for the year  
20 ending December 31, 2000. These financial data list assets of \$162.17 million, no long-term debt,  
21 total stockholders' equity of \$162.17 million, and a net loss of \$2.03 million with zero operating  
22 revenues. Based on this information, Staff believes that EPGN lacks sufficient financial strength to  
23 offer the requested telecommunications services in Arizona absent the procurement of a performance  
24 bond.

25          14.    Staff recommends, as amended, that EPGN's application for a Certificate to provide  
26 competitive facilities-based and resold telecommunications services be granted subject to the  
27 following conditions:

28               (a)    unless it provides services solely through the use of its own facilities, EPGN

1 should be ordered to procure an Interconnection Agreement before being  
2 allowed to offer local exchange service;

3 (b) EPGN should be ordered to file with the Commission, within 30 days of an  
4 Order in this matter, its plan to have its customers' telephone numbers included  
5 in the incumbent's Directories and Directory Assistance databases;

6 (c) EPGN be ordered to pursue permanent number portability arrangements with  
7 other LECs pursuant to Commission rules, federal laws and federal rules;

8 (d) EPGN be ordered to abide by and participate in the AUSF mechanism  
9 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-  
10 03905A-00-0513E-95-0498);

11 (e) Applicant be ordered to abide by the quality of service standards that were  
12 approved by the Commission for USWC in Docket No. T-0151B-93-0183;

13 (f) in areas where Applicant is the sole provider of local exchange service  
14 facilities, EPGN be ordered to provide customers with access to alternative  
15 providers of service pursuant to the provisions of Commission rules, federal  
16 laws and federal rules;

17 (g) EPGN be ordered to certify, through the 911 service provider in the area in  
18 which it intends to provide service, that all issues associated with the provision  
19 of 911 service have been resolved with the emergency service providers within  
20 30 days of an Order in this matter;

21 (h) EPGN be ordered to abide by all the Commission decisions and policies  
22 regarding CLASS services;

23 (i) EPGN be ordered to provide 2-PIC equal access;

24 (j) EPGN be required to certify that all notification requirements have been  
25 completed prior to a final determination in this proceeding;

26 (k) EPGN be required to notify the Commission immediately upon changes to its  
27 address or telephone number;

28 (l) EPGN be ordered to comply with all Commission rules, orders, and other  
requirements relevant to the provision of intrastate telecommunications  
service;

(m) EPGN be ordered to maintain its accounts and records as required by the  
Commission;

(n) EPGN should be ordered file with the Commission all financial and other  
reports that the Commission may require, and in a form and at such times as  
the Commission may designate;

(o) EPGN maintain on file with the Commission all current tariffs and rates, and  
any service standards that the Commission may require;

(p) EPGN should be ordered to cooperate with Commission investigations of  
customer complaints;

(q) EPGN be ordered to participate in and contribute to a universal service fund, as

required by the Commission; and

(r) In order to protect EPGN's customers:

- (1) EPGN should be ordered to procure a performance bond equal to \$100,000. The minimum bond amount of \$100,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from EPGN's customers;
- (2) that if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
- (3) that the Applicant should be required to notify each of its customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
- (4) that proof of the performance bond should be docketed within 90 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect; however,
- (5) if, at some time in the future, the Applicant's financial outlook improves, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission.

15. Staff further recommended that EPGN's tariffs be approved on an interim basis subject to the following:

- (a) That EPGN file tariffs in accordance with this Decision within 30 days of an Order in this matter or within 30 days of an Order approving its interconnection agreement, whichever is later;
- (b) That EPGN should be required to file in this Docket, within 18 months of the date it first provides service following certification, sufficient information for Staff analysis and recommendation for a fair value finding, as well as for an analysis and recommendation for permanent tariff approval. This information must include, at a minimum, the following:
  1. A dollar amount representing the total revenue for the first twelve months of telecommunications service provided to Arizona customers by EPGN following certification, adjusted to reflect the maximum rates that EPGN has requested in its tariff. This adjusted total revenue figure could be calculated as the number of units sold for all services offered times the maximum charge per unit.

1                   2. The total actual operating expenses for the first twelve months of  
2                   telecommunications service provided to Arizona customers by EPGN  
3                   following certification.

4                   3. The value of all assets, listed by major category, used for the first twelve  
5                   months of telecommunications services provided to Arizona customers by  
6                   EPGN following certification. Assets are not limited to plant and  
7                   equipment. Items such as office equipment and office supplies should be  
8                   included in this list.

9                   (c) EPGN's failure to meet the condition to timely file sufficient information for a  
10                  fair value finding and analysis and recommendation of permanent tariffs  
11                  should result in the expiration of the Certificate of Convenience and Necessity  
12                  and of the tariffs.

13               16. At the hearing, EPGN agreed to comply with all of Staff's recommendations. The  
14               Applicant indicated that it intends to begin operations in Arizona by the second quarter of 2002. At  
15               the hearing, the Applicant's witness explained that EPGN intends to provide "long-haul" type  
16               services in Arizona, while its affiliate company, El Paso Networks, L.L.C. will serve metropolitan  
17               areas in the state. The Applicant has agreed that if, at some time in the future these affiliate  
18               companies experience increased market share, it may be reasonable for the Commission to place  
19               restrictions on the ability of the companies to compete with each other in the same geographic area.  
20               With this explanation, Staff supports approval of the application.

21               17. On August 29, 2000, the Court of Appeals, Division One, ("Court") issued its Opinion  
22               in U S West Communications, Inc. vs. Arizona Corporation Commission, 1 CA-CV 98-0672, holding  
23               that "the Arizona Constitution requires the Commission to determine fair value rate bases for all  
24               public service corporations in Arizona prior to setting their rates and charges."

25               18. On October 26, 2000, the Commission filed a Petition for Review to the Arizona  
26               Supreme Court. On February 13, 2001, the Commission's Petition was granted. However, at this  
27               time we are going to request FVRB information to insure compliance with the Constitution should  
28               the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We also  
29               are concerned that the cost and complexity of FVRB determinations must not offend the  
30               Telecommunications Act of 1996.

**CONCLUSIONS OF LAW**

1  
2 1. Applicant is a public service corporation within the meaning of Article XV of the  
3 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

4 2. The Commission has jurisdiction over Applicant and the subject matter of the  
5 application.

6 3. Notice of the application was given in accordance with the law.

7 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
8 Certificate to provide competitive telecommunications services.

9 5. Pursuant to Article XV of the Arizona Constitution as well as the Arizona Revised  
10 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
11 in its application.

12 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide  
13 competitive facilities-based and resold local exchange, interexchange, and exchange access  
14 telecommunications services in Arizona as conditioned by Staff's recommendations as modified  
15 below.

16 7. The telecommunications services that the Applicant intends to provide are competitive  
17 within Arizona.

18 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
19 it is just and reasonable and in the public interest for Applicant to establish rates and charges which  
20 are not less than the Applicant's total service long-run incremental costs of providing the competitive  
21 services approved herein.

22 9. Staff's recommendations in Findings of Fact Nos. 14 and 15 are reasonable and should  
23 be adopted.

**ORDER**

24  
25 IT IS THEREFORE ORDERED that the application of El Paso Global Networks Company  
26 for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based  
27 and resold local exchange, and exchange access telecommunications services in Arizona shall be, and  
28 is hereby, granted, as conditioned herein.

1 IT IS FURTHER ORDERED that El Paso Global Networks Company shall procure a  
 2 performance bond equal to \$100,000 the earlier of 90 days after the effective date of this Order or 30  
 3 days prior to the commencement of service. The minimum bond amount of \$100,000 shall be  
 4 increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the  
 5 Applicant's customers.

6 IT IS FURTHER ORDERED that if, at some time in the future El Paso Networks, L.L.C. and  
 7 El Paso Global Networks Company experience increased market share, the Commission may place  
 8 restrictions on the ability of the affiliated companies to compete with each other in the same  
 9 geographic area.

10 IT IS FURTHER ORDERED that El Paso Global Networks Company shall comply with all  
 11 of the Staff recommendations set forth in Findings of Fact Nos. 14 and 15.

12 IT IS FURTHER ORDERED that El Paso Global Networks shall file with the Compliance  
 13 Section of the Utilities Division a letter indicating the date on which it will begin providing service at  
 14 least 60 days prior to providing service.

15 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

16 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

17  
 18 CHAIRMAN

COMMISSIONER

COMMISSIONER

19  
 20 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
 21 Secretary of the Arizona Corporation Commission, have  
 22 hereunto set my hand and caused the official seal of the  
 23 Commission to be affixed at the Capitol, in the City of Phoenix,  
 24 this \_\_\_\_ day of \_\_\_\_\_, 2001.

25  
 26 BRIAN C. McNEIL  
 27 EXECUTIVE SECRETARY

28  
 29 DISSENT \_\_\_\_\_  
 30 DDN:mlj



1 SERVICE LIST FOR: EL PASO GLOBAL NETWORKS COMPANY

2 DOCKET NO.: T-03999A-01-0207

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